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PROGRAM GUIDANCE

PROGRAM: 1937 Housing Act and NAHASDA

FOR: All Tribal Government Leaders and Tribally Designated Housing Entities
(TDHE)



FROM: Ted Key, Acting Deputy Assistant Secretary, PN

TOPIC: 1937 Housing Act and NAHASDA requirements on the 30% of Income
Rule and Income Verifications

PURPOSE: A number of questions have arisen regarding the monthly payment for Mutual Help units built under the 1937 Housing Act and homeownership units built under NAHASDA. This guidance is provided to clarify the payment requirements for the two programs. In addition, the audit conducted by the Office of Inspector General on the implementation of NAHASDA states that guidance on the 30% rule and income verifications would be helpful to grant recipients.

30% OF INCOME RULE

How do payment requirements differ for Mutual Help participants and NAHASDA Homeownership participants?

Mutual Help Program: The Mutual Help and Occupancy Agreement (MHOA) requires that participating families pay 15-30 percent of adjusted income for the required monthly payment. The minimum monthly payment must not be lower than the administration charge established by the tribe/tribally designated housing entity (TDHE)/Indian housing authority (IHA). The maximum payment shall not be less than the sum of the administration charge and the monthly debt service amount shown on the homebuyer's purchase price schedule.

NAHASDA Homeownership Programs: Families participating in a lease purchase homeownership program developed under NAHASDA are subject to the requirement at 24 CFR 1000.124, which states "A recipient can charge a low-income rental tenant or homebuyer rent or homebuyer payments not to exceed 30 percent of the adjusted income of the family". The definition of "homebuyer payment", at §1000.10(b), is limited to "lease purchase" agreements. Based on this definition, the "30 percent rule" is only applicable to lease purchase programs developed under NAHASDA and does not apply to other types of homeownership programs. Payment in excess of 30% may be charged for "mortgage programs" including down payment assistance.

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Why does the MHOA still apply to Mutual Help units developed under the 1937 Housing Act?

Question 43 of “The Indian Housing Block Grant Program Revised Notice of Transition Requirements” issued on January 27, 1998, states that the MHOA remains in effect until the contract term expires or modifications are made. Modifications to the agreement must be acceptable to both parties and must be in accordance with NAHASDA.

May tribes/TDHEs continue to use the MHOA for units developed under NAHASDA or for families who move into 1937 Housing Act units after October 1, 1997?

Tribes/TDHEs may continue to use the MHOA for lease purchase programs developed under NAHASDA; however, the MHOA must be modified to comply with NAHASDA requirements. Minimum or maximum payments under NAHASDA may not result in the family paying more than 30 percent of adjusted income for the monthly payment. This NAHASDA requirement, at §1000.124, is contrary to standard MHOA language regarding administration charges and maximum payments.

May tribes/TDHEs continue to use the MHOA for families who moved into 1937 Housing Act units after October 1, 1997, the date NAHASDA was enacted?

Families who execute a MHOA after October 1, 1997, are required to comply with NAHASDA requirements. Therefore, the MHOA should be amended appropriately (see response to question above) or a different form of agreement that complies with NAHASDA should be developed for use. The lease purchase payment cannot exceed 30%, including the payment of an administrative charge.

INCOME VERIFICATIONS

What are the income verification requirements under NAHASDA?

The regulation at §1000.128 requires that the recipient verify that the family is income eligible based on anticipated family income. Documentation must be provided by the family to verify this determination. In addition, the recipient may require a family to periodically verify its income in order to determine housing payments or continued occupancy consistent with locally adopted policies. If the recipient requires periodic or annual income verification, the family must provide documentation that verifies its income, and the recipient must retain the documentation.

As noted on page 1 of this Guidance, payment requirements based on income verification are as follows:

- Mutual Help Program: Required monthly payments may be between 15-30 percent of adjusted income (but may not exceed 30 percent), based on the MHOA.
- NAHASDA Homeownership Programs: Families participating in a lease purchase homeownership program (similar to the Mutual Help program) may not be charged a monthly payment in excess of 30 percent of the adjusted income. This 30 percent limitation does not apply to other types of homeownership “mortgage” programs, including down payment assistance or mortgage payments.

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- Rental Programs: Monthly payments for families participating in a rental program may not exceed 30 percent of the adjusted income of the family.

Do the annual income verification requirements of the 1937 Housing Act programs (Low Rent, Mutual Help, and Turnkey III) still apply?

As noted in the question above, periodic or annual income verifications are not required under NAHASDA. However, if the rental contract, MHOA, or Turnkey III Homebuyer Ownership Opportunity Agreement (HOOA) is still in use, then the requirement for periodic/annual verifications found in these contracts will apply.

How may tribes/TDHEs ensure that families do not pay more than 30% of their income for rents or homebuyer rents/payments?

Tribes and TDHEs may choose to include language in their policy governing occupancy that requires that changes in income during the year must be reported. By performing income verifications either periodically or when incomes decrease/increase, the tribe/TDHE is assured that no family is paying more than it should, and is not paying more than 30% of adjusted income.

If you have any questions regarding information in this program guidance, please call your local Area Office of Native American Programs.